

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Zakkiyah Salahuddin	:	
	:	
v.	:	C-2016-2547092
	:	
Metropolitan Edison Company	:	

ORDER
DENYING MOTION FOR JUDGMENT ON THE PLEADINGS

On April 21, 2016, Zakkiyah Salahuddin filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Met-Ed or the Company), Docket No. C-2016-2547092. In her complaint, Ms. Salahuddin averred that there are incorrect charges on her bill and that she is having a safety, reliability or quality problem with her utility service. Ms. Salahuddin also indicated that she is “requesting an appeal.” For relief, Ms. Salahuddin requested that she would like “the company to remove all incorrect charges on the account.”

On June 13, 2016, Met-Ed filed an answer and new matter in response to the complaint. In its answer, Met-Ed admitted or denied the various averments made by Ms. Salahuddin. In particular, Met-Ed denied that there are incorrect charges on the account or that there is a reliability or quality problem with the electric service provided to the service address. Met-Ed also noted a Final Order issued by the Commission on July 23, 2015 regarding a complaint previously filed by Ms. Salahuddin against Met-Ed making final an initial decision dismissing that prior complaint and that Ms. Salahuddin’s “appeal” of that decision is not proper before the Commission. In its new matter, which was accompanied by a notice to plead, Met-Ed reiterated its position that the Commonwealth Court of Pennsylvania has exclusive jurisdiction to entertain and rule on final actions of the Commission. Met-Ed requested that Ms. Salahuddin’s complaint be dismissed with prejudice or denied in its entirety.

Also on June 13, 2016, Met-Ed filed a preliminary objection in response to Ms. Salahuddin's complaint. In its preliminary objection, which was also accompanied by a notice to plead, Met-Ed averred that, because the Commonwealth Court of Pennsylvania has exclusive jurisdiction to entertain and rule on final actions of the Commission, Ms. Salahuddin's complaint contains impertinent matter in its requested relief. Met-Ed, therefore, reiterated its position that Ms. Salahuddin's complaint should be dismissed in its entirety.

Ms. Salahuddin filed neither an answer to Met-Ed's preliminary objection nor to its new matter. Met-Ed's preliminary objection was granted in part and denied in part by order dated July 22, 2016. Ms. Salahuddin's appeal of the Commission's decision to dismiss a previously filed complaint was stricken from the complaint and all remaining issues raised in the complaint were allowed to proceed to a hearing.

On August 8, 2016, a Call-In Telephone Hearing Notice was issued scheduling a hearing for this case for Thursday, September 15, 2016 and assigning me as the presiding officer. A prehearing order dated August 8, 2016 was issued setting forth various procedural rules that would govern the hearing.

On August 18, 2016, Met-Ed filed a motion to compel discovery responses. Met-Ed averred that it served discovery on Ms. Salahuddin on July 26, 2016 and that no objections to the discovery or answers were timely received. Met-Ed requested that an order be issued compelling Ms. Salahuddin to fully and completely respond to the discovery requests or have the complaint dismissed in its entirety. Ms. Salahuddin did not file an answer to the motion. Met-Ed's motion to compel was granted via order dated August 26, 2016 wherein Ms. Salahuddin was directed to provide answers to the interrogatories within ten days or face sanctions, including possible dismissal of the complaint.

On September 7, 2016, Met-Ed filed a motion for summary judgment seeking to have Ms. Salahuddin's complaint dismissed prior to the hearing. In its motion, Met-Ed argued, among other things, that all the issues alleged in the complaint were reviewed by the Commission in response to the first complaint and that there are no material issues in dispute.

Ms. Salahuddin did not file an answer to Met-Ed's motion. As the motion was filed one week prior to the hearing, it was not addressed prior to the hearing.

The hearing convened on September 15, 2016 as scheduled. Ms. Salahuddin appeared and provided oral testimony. Margaret Morris, Esquire, appeared on behalf of Met-Ed. Prior to the hearing, a lengthy discussion was held regarding the proper scope of the hearing in light of Met-Ed's motion for judgment on the pleadings, various orders previously issued in this case and the prior Commission decision regarding a complaint Ms. Salahuddin filed against Met-Ed on January 14, 2015 at docket number F-2015-2463441. In light of that discussion, it was determined that Ms. Salahuddin would present her testimony and a determination would be made regarding which issues Ms. Salahuddin was able to raise as part of her complaint. A further hearing would then be scheduled to allow Met-Ed to cross-examine Ms. Salahuddin and provide its response to her testimony on the issues in her complaint she is able to pursue.

The transcript of the September 15, 2016 hearing was submitted to the Commission on October 3, 2016.

Met-Ed's motion for judgment on the pleadings is now ready for disposition. For the reasons discussed below, Met-Ed's motion will be denied. Furthermore, this order will clarify the scope of this proceeding by determining which issues Ms. Salahuddin is allowed to raise so that Met-Ed can properly provide a defense of the complaint.

The Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Chapters 1, 3 and 5, provide for the filing of motions for judgment on the pleadings. In particular, Section 5.102 of the Commission's Rules provides in relevant part:

§ 5.102 Motions for summary judgment and judgment on the pleadings.

- (a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

* * *

(d) *Decisions on Motions.*

- (1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa.Code § 5.102(a), (d)(1). For a court to grant a motion for judgment on the pleadings, the record must show that no facts are at issue and that the law is so clear that a trial would be a fruitless exercise. All of the opposing party's well-pleaded allegations are viewed as true but only those facts admitted by him may be considered against him. Beardell v. Western Wayne School District, 91 Pa. Commonwealth Ct. 348, 496 A.2d 1373 (1985).

Met-Ed's motion will be denied. When accepting as true all well-pleaded material allegations made by Ms. Salahuddin in her complaint, the record does not show that there are no facts at issue and it is not clear that a hearing would be a fruitless exercise with regard to various averments Ms. Salahuddin made in her complaint and during the hearing held on September 15, 2016.

To begin, on March 17, 2016, the Commission issued an Opinion and Order denying a petition for rescission or amendment of the prior determination to dismiss Ms. Salahuddin's first complaint because she failed to appear for the hearing. The Commission determined that Ms. Salahuddin's petition, which was untimely, failed to set forth any arguments that warrant special relief. The order noted that Ms. Salahuddin never disputed receiving notice

of the hearing or the multiple attempts to reach her at the time of the hearing so that she could participate in the hearing. The Commission determined that, under the facts of the specific case and Ms. Salahuddin's failure to abide by the rules, it would not be prudent to grant the petition for reconsideration.

In its preliminary objections, Met-Ed argued that Ms. Salahuddin's request in her complaint that she would like an appeal of the Commission's decision regarding her first complaint was impertinent matter because the Commonwealth Court of Pennsylvania has exclusive jurisdiction to entertain and rule on final actions of the Commission. Met-Ed, therefore, requested that Ms. Salahuddin's complaint should be dismissed in its entirety. The order granting in part and denying in part Met-Ed's preliminary objections dated July 22, 2016 found that Met-Ed was correct with regard to Ms. Salahuddin's request for an appeal and that portion of her complaint was stricken. Met-Ed's preliminary objection, however, was denied in part because of the other averments in the complaint over which the Commission does have jurisdiction and those remaining issues were allowed to proceed to a hearing before an administrative law judge.

Finally, in the order granting the motion to compel, Ms. Salahuddin was directed to provide answers to Met-Ed's interrogatories within ten days or face sanctions, including possible dismissal of the complaint. Subsequently, as noted in Met-Ed's motion for summary judgement filed on September 7, 2016, Ms. Salahuddin did provide responses to Met-Ed's discovery.

Although the second complaint filed by Ms. Salahuddin appears to raise the same issues of incorrect charges on the bill as the first complaint, the first complaint was denied because Ms. Salahuddin failed to appear for the hearing. There was never a hearing on the merits of the first complaint. The Commission's order affirmed the underlying decision to deny the complaint because of the failure to prosecute the complaint – not because of the merits of the complaint. The Commission's order denying reconsideration of Ms. Salahuddin's first complaint does not preclude Ms. Salahuddin from raising the issues in a subsequent complaint, so long as those issues are within the statute of limitations.

Furthermore, the order granting in part and denying in part Met-Ed's preliminary objection recognized that Ms. Salahuddin's request to appeal the Commission's decision not to reconsider its denial of the first complaint was not an appropriate issue for the Commission to consider in the second complaint. That order recognized that the appropriate forum for that issue is the Commonwealth Court of Pennsylvania. That order further recognized, however, that Ms. Salahuddin should be given an opportunity to be heard regarding her averments that there are incorrect charges on her bill, among other things, and not have her complaint dismissed on the basis of a preliminary motion. That order noted that, *at a minimum*, the incorrect charges averred by Ms. Salahuddin in the second complaint could have arisen after the record in the first complaint closed. This order did not preclude additional issues from being raised, if done appropriately.

With regard to the order granting the motion to compel, as noted above, this order directed Ms. Salahuddin to respond to Met-Ed's discovery within ten days or face sanctions, including possible dismissal of the complaint. As evidenced in Met-Ed's motion for summary judgment, Ms. Salahuddin provided the requested responses. Those responses provided, in part, that Ms. Salahuddin believes that there are incorrect charges on her bill, that there is a safety concern in the form of identity theft and that there is a quality concern due to "false findings/switching of lines." As such, nothing in the order granting the motion to compel narrows the scope of Ms. Salahuddin's instant complaint.

Finally, during the hearing, Ms. Salahuddin testified regarding various issues, including, among other things, an amount of \$911 that she believes was added to her bill, tr. 7-8; a termination notice she received, tr. 8-9; and, her outstanding balance of \$5,000, tr. 10. These are issues which may give rise to a violation of the Public Utility Code or a Commission order or regulation that warrant denying Met-Ed's motion for judgment on the pleadings.

In conclusion, Met-Ed's motion for judgment on the pleadings will be denied. As noted above, the standard for granting a motion for judgment on the pleadings is very high. Such a motion may only be granted in those cases where the record clearly shows that there are no

genuine issues of material fact and that the moving party is entitled to judgment as a matter of law when viewing the record in the light most favorable to the nonmoving party. Met-Ed has failed to satisfy this standard with regard to Ms. Salahuddin's complaint. Genuine issues of material facts exist that require a hearing and cannot be dismissed on a preliminary basis. Not all issues alleged in the complaint or raised in the hearing have been resolved by the Commission or precluded by a preliminary motion. A further hearing will be convened for purposes of Met-Ed's cross-examination of Ms. Salahuddin in response to her testimony provided during the September 15, 2016 hearing and presentation of its defense of the complaint as articulated consistent with this order.

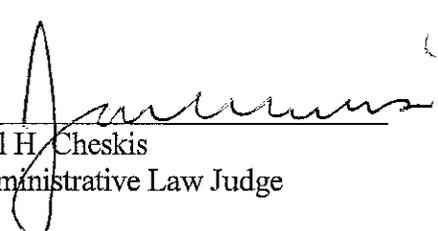
ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion for judgment on the pleadings filed by Metropolitan Edison Company on September 7, 2016 at the above-referenced docket will be denied.
2. That a further hearing will be scheduled regarding the complaint of Zakkiyah Salahuddin against Metropolitan Edison Company at Docket Number C-2016-2547092 for the purpose of Metropolitan Edison Company's cross examination of Ms. Salahuddin and subsequent presentation of its defense of the complaint.

Date: October 14, 2016


Joel H. Cheskis
Administrative Law Judge

C-2016-2547092 - ZAKKIYAH SALAHUDDIN v. METROPOLITAN EDISON COMPANY

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